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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,559	01/16/2004	Frank M. Kulick III	96,046	5968

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EXAMINER

BARRY, CHESTER T

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,559

Applicant(s)

KULICK, FRANK M.

Examiner

Chester T. Barry

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 6-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The amendment to claims filed 1/16/04 in which cancellation of claims 6 – 15 was requested, has not been entered. Claims 6 – 15 remain pending in this case. The examiner requests that applicant in the next response cancel claims 6 – 15.

Claims 1 – 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Per claim 1, it is not reasonably clear whether the phrase “under different conditions” modifies the phrase “delivered to a tank” or the phrase “processing a fluent biomass.” That is, is the invention directed to a method for processing a fluent biomass under different conditions, or is it directed to a method for processing a fluent biomass delivered to a tank under conditions different from those conditions under which the fluent biomass is processed? Clarification based on citation to the specification is required. With regard to the positively recited steps of this processing method, the application is unclear how one practices the step of “internally dividing” the tank. Does one cut a dividerless tank and insert a divider therein? Or is the tank so large that a human welder could enter the tank and divide the tank into a large and small section through erection of a wall therein? Or are robotic means used to erect a wall or divider within a tank too small for human entrée? The examiner suggests that applicant consider re-drafting the claim as a method of using an internally divided tank, said tank have a large chamber or the large and a small chamber of the like. As written, the phrase “internally dividing” confusingly suggests that the method has more to do with manners of making a chambered tank rather than a method of using an internally divided tank to process a fluent biomass.

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It is unclear whether membrane filtration in the smaller chamber necessarily limits the scope of the invention of claim 1. The reason for this lack of clarity is the phrase, "involving *either*

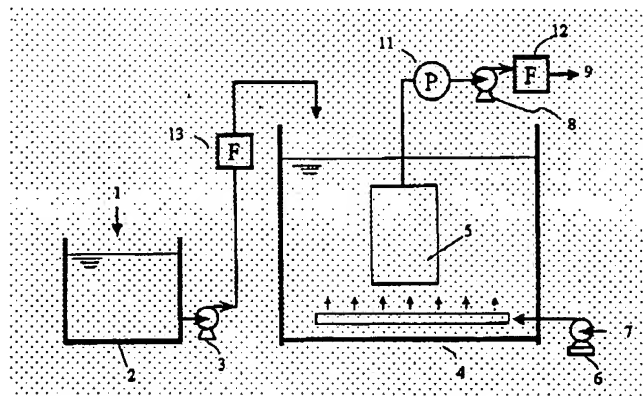
[a] direct discharge of a waste sludge *or*

[b] withdrawal of a cleansed effluent by membrane filtration"

(emphasis and bracketed a, b, added) coupled with the limitation "to undergo said membrane filtration therein." This latter quoted phrase suggests that membrane filtration in the smaller chamber is necessarily limiting of the claim, whereas the "either . . . or" phrase suggests perhaps not. Please clarify.

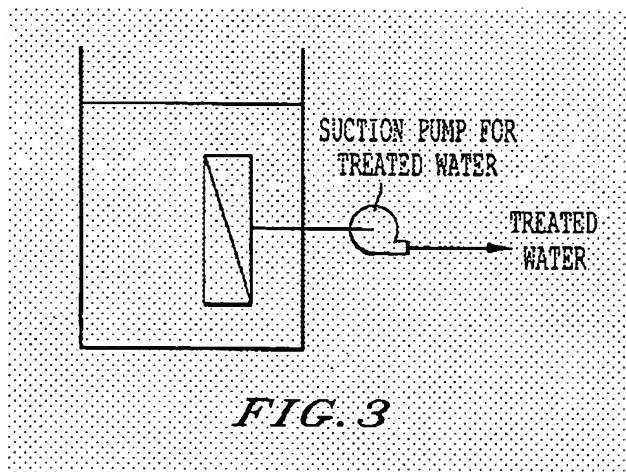
Claims 1 – 5 would be allowed if amended to overcome the foregoing ills under Sec. 112(2nd). The prior art fails to teach or suggest use of an internally divided tank in the manner recited.

USP 6808628 is cited for disclosure of membrane filtration of a processed fluent biomass, but the vessel in which the membrane filtration takes place and the biological treatment is not an internally divided tank as required by claim 1.



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See also USP 6461511:



The title is objected to. It should be amended to refer only to the method of claims 1 – 5.

The specification is objected to. In the 5/13/04 paper, applicant claimed the benefit of the parent application. The phrase should read, "This application is a divisional application of US Ser. No. . . . etc." Correction is required.

CHESTER T. BARRY
PRIMARY EXAMINER

571-272-1152